IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7174 of 1992

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

Y S BHAMBULKAR

Versus

DIRECTOR NATIONAL INSTITUTE FOR PUBLIC COOP & CHILD DEVEL

Appearance:

1. Special Civil Application No. 7174 of 1992
MR RR VAKIL for Petitioner No. 1
MR Jitendra Malkan, Additional
Standing Counsel for the respondents

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 21/10/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the

Constitution is directed against the inaction on the part of the respondents Nos. 1 and 2, whereby, they have not submitted information with regard to the services rendered by the petitioner to the respondent No.3 for the purpose of counting past service of the petitioner which he had rendered with the respondents Nos. 1 and 2. The refusal on the part of the respondents Nos.1 and 2 to forward the case of the petitioner to the respondent No.3 for counting his past service has resulted into loss of over ten years of service and, accordingly, would result into further loss in retiral dues including pensionary benefits.

2. It is the case of the petitioner that the petitioner had served for a period of ten years and one month as Upper Division Clerk with the respondent No.2, which is a Central Government Organisation, and, thereafter, applied through proper channel and submitted an application to the National Institute of Public Cooperation & Child Development ('NIPCCD' for short), respondent No.1 herein, for the post of Assistant in the pay-scale of Rs.1400-2600 in response to a public advertisement. At the same time, the petitioner also made an application through his employer, respondent No.2, on 14th December 1988 to Indira Gandhi National Open University ('IGNOU' for short), respondent No.3 herein, for the post of Senior Assistant in the pay-scale of Rs.1400-2600 in response to a public advertisement. Both the applications of the petitioner were forwarded by the respondent No.2. It is the case of the petitioner that both the organisations, namely, the respondents nos. 1 and 3, had selected the petitioner and the petitioner received an offer of appointment from the respondent No.3 for the post of Senior Assistant and, therefore, by letter dated 10th May 1989, the petitioner requested the respondent No.2 to relieve him for joining the respondent No.3.

3. At the same time, on 24th May 1989, the petitioner received another offer from the respondent No.1 for the post of Assistant and the petitioner was in dilemma as to whether to join respondent No.1 or respondent No.3 and, ultimately, he had decided to join the services of respondent No.1 and requested the Authority by letter dated 13th June 1989 to relieve him for joining the respondent No.1.

4. The petitioner was relieved by the respondent No.2 with effect from 17th July 1989 and, on the next day, i.e. on 18th July 1989, the petitioner joined the respondent no.1 at their Lucknow office as Assistant and

worked for a very short stint from 18th July 1989 to 21st August 1989 and submitted his resignation for joining the respondent No.3 and his resignation was accepted by the respondent no.1 on 14th August 1989 and the petitioner was relieved with effect from 21st August 1989.

5. Thereafter, the petitioner joined 'IGNOU' at Ahmedabad as Senior Assistant on 23rd August 1989 in the pay-scale of Rs.1400-2600 and discharged his duties accordingly and, subsequently, came to be appointed in the post of Section Officer with effect from 10th September 1990. He, thereafter, started correspondence with the Authorities for the purpose of counting his past service. Copies of the letters written by the petitioner to the respondents Nos. 1, 2 and 3 are at Annexures "F", "G", "H" and "I". The Authorities replied to the petitioner expressing their inability to count the past service of the petitioner.

6. The learned advocate for the petitioner has drawn the attention the Court to the letter dated 18th December 1990 at Annexure "H" whereby it was stated by the respondent No.3 to the respondent No.1 that the petitioner may be advised to address his application to his immediate previous department, i.e. 'NIPCCD' for transfer of his benefits to 'IGNOU' and submit the same to the office for onward submission to them and, as regards transfer of service of the petitioner from DGBR, i.e. the respondent No.2 to 'NIPCCD', the petitioner can correspond with the concerned offices directly.

7. The respondent No.2 has filed affidavit-in-reply, whereby it is stated that they have no objection if the petitioner is granted continuity of service by considering his past service on record and subject to transferring service data of the petitioner by the respondent No. 1 to the office of the respondent No.2. Similar is the stand taken by respondent No.1 in its letter for grant of the said benefits.

8. The learned advocate for the petitioner has relied upon Rules 14, 37 and 37A of the Central Civil Services Rules pertaining to grant of pension and the Office Memorandum for grant of continuity of service by considering the past service of a Central Government employee in various Central Government Organisations, where the pension scheme is available.

9. The learned Additional Standing Counsel, Mr. Malkan, appearing for the respondents, has submitted that regarding counting of past service rendered by the

petitioner with the respondent No.2, the petitioner has already been informed to apply through his present employer and, since no request was received by them, no further action was taken.

10. Under the circumstances, it transpires, from various letters produced along with the petition, particularly Annexure "G", "H", "N" and "O" to the petition, that the past service of the petitioner is not considered only because of the inaction on the part of all the three Departments of the Central Government. It is established that, while the petitioner was serving with the respondent No.2, after taking permission from the respondent No.2, the petitioner had simultaneously applied to the respondents Nos. 1 and 3 for the post of Assistant and came to selected by both the Organisations with the result the petitioner chose to join the respondent No.1 for a very short period of 30 days or so and, thereafter, immediately joined the respondent No.3 and continued to serve as Section Officer. Accordingly, it is proved from the correspondence annexed with the petition that the petitioner was in continuous service of respondent No.3, and he is entitled to the benefit as per the provisions of Rules 14 and 37 of the Central Civil Service (Pension) Rules, and the Office Memorandum issued in that behalf.

11. The respondent No.2 is, therefore, directed to finalise the claim of the petitioner with regard to his past service in accordance with the Rules 14 and 37 of the Central Civil Service (Pension) Rules, as early as possible, preferably within eight weeks from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(Anant S. Dave, J.)
(swamy)